IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

:::

JUDGMENT

Firm Sadul Shahar Cotton Ginning & Pressing Factory
vs.
Rajasthan State Electricity Board, Jaipur & anr.

S.B.CIVIL FIRST APPEAL NO.25/1983 UNDER SECTION 96 CPC AGAINST THE JUDGMENT AND DECREE DATED 11.11.1982 PASSED BY SHRI AMAR SINGH GODARA, ADDITIONAL DISTRICT JUDGE, SRI GANGANAGAR IN CIVIL ORIGINAL SUIT NO.60/1979.

DATE OF JUDGMENT ::: 15.1.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. Rajendra Mehta, for the appellant.
Mr. Manish Shishodia, for the respondents.

- - - - -

BY THE COURT:

The plaintiff/appellant is aggrieved against the dismissal of its suit vide judgment and decree dated 11.11.1982 passed by the learned Additional District

Judge, Sri Ganganagar in Civil Original Suit No.60/1979.

Brief facts of the case are that the plaintiff/ appellant – a registered firm, obtained electric connection of 125 HP on 16.1.1965 from the respondent no.1 Rajasthan State Electricity Board. The plaintiff obtained sanctioned for additional load of 140 H.P. Which was released by the respondent no.1 on 21.10.1968. The respondent no.2 Assistant Engineer (Rural) of the respondent no.1 Board sent a bill dated 25.5.1967 wherein energy charges for the plaintiff's electricity connection were levied after multiplying by three (3) the readings recorded in the meter installed by the respondent Board. The plaintiff/appellant raised protest against the multiplier as according to the plaintiff, the Board could have issued bill only according to the meter reading and should not have applied the multiplier of 3 for applying the charges of the electricity consumed by the plaintiff. The plaintiff being aggrieved against the said electricity bill filed civil original suit no.17/1968. The suit was filed on 19.1.1968 in the Court of Civil Judge, Sri Ganganagar. In the said suit, both the parties submitted written compromise and, therefore, the suit no.17/1968 was decided by the trial court as per the compromise dated 17.10.1968. In the said compromise,

both the parties agreed that the method of calculation of electricity charges would be referred to the laboratory of the defendant no.1 at Jaipur and in case, the Laboratory will held application of multiplier of three proper, the defendant Board will reissue the bills for the period from 28.1.1967 to 17.10.1968 in accordance with the medium schedule of the tariff. It was further agreed that the plaintiff will pay the amount of such bills in four monthly equal installments. It was also agreed that High Tension (H.T.) tariff would be applicable to the plaintiff only from the date when 265 H.P. load was allowed to the plaintiff for 24 hours. The laboratory of the defendant no.1 examined the above meter and submitted its test result vide its report dated 15.4.1969 upholding the application of multiplier of 3 for charging the electricity connection of the appellant's unit. In consequence thereof, the defendant no.2 sent bills for Rs.23,579.56p. The plaintiff was of the view that the subsequent bill was due to any award passed under the Indian Arbitration Act, 1940 (for short 'the Act of 1940'), therefore, the plaintiff submitted an application under Section 33 of the Act of 1940 in the Court of District Judge, Sri Ganganagar on 8.11.1969 which was registered as Civil Original Suit No.52/1969 and that was transferred to the Court of Additional District Judge, Ganganagar for decision. The plaintiff

also filed an application for injunction. The Additional District Judge, Sri Ganganagar issued temporary injunction against the respondents on 19.11.1969 restraining them from realising the said bill amount and from disconnecting the electricity connection of the plaintiff's factory.

An objection was submitted by the respondent Board that the petition under Section 33 of the Act of 1949 itself was not maintainable as no proceedings under the Act of 1940 were ever taken. The trial court rejected the defendants' objection. The defendants challenged the injunction order as well as the order of rejection of the defendants' objection against the maintainability of application under Section 33 of the Act of 1940 by preferring S.B. Civil Misc. Appeal No.35/70 and S.B.Civil Revision Petition No.152/70 before this Court. This Court allowed the appeal and revision mentioned above vide judgment dated 8.1.1973 and this Court held that the plaintiff's application under Section 33 of the Act of 1940 was not maintainable. Consequently, the plaintiff's application under Section 33 of the Act of 1940 was dismissed and the injunction order passed by the court below was also set aside by this Court.

After dismissal of the plaintiff's application under Section 33 of the Act of 1940, the defendant no.2 insisted for payment of bill amount by sending letter

dated 6.2.1973 to the plaintiff. The plaintiff offered Rs.6,000/- against the bill despite the fact that the bill was for Rs.23,579.56p on the plea that as per the compromise decree dated 17.10.1968 in civil original suit no.17/1968, the plaintiff can pay the amount in four installments. However, the defendants did not agree for that and asked the plaintiff to deposit the entire bill amount of Rs.23,579.56p with a threat that in case the amount is not paid, the plaintiff's electricity connection will be disconnected. The plaintiff deposited the balance amount under protest and thereafter, filed the present suit for recovery of Rs.23,579.56p.

It appears from the plaint itself that though the scope of dispute was very limited because of the reason that when the first bill was issued to the plaintiff. The plaintiff had grievance only to the extent that the respondents should not have multiplied the meter reading by three (3), but it appears from the facts pleaded that in the subsequent suit, the plaintiff challenged the recovery of Rs.23,579.56p on various counts by bifurcating the levy of charges.

The appellant/plaintiff's suit was seriously contested by the defendants/respondents by filing written statement. The defendants controverted each and every allegation of the plaintiff with respect to each and every charge levied by the respondents and

contested by the appellant, therefore, for each individual head of charge, separate issues were framed by the trial court.

The plaintiff produced its witness PW1 Rameshwar Das whereas the defendants produced their witness DW1 Shiv Shanker.

The trial court decreed the suit of the plaintiff only for the amounts of Rs.122.55p. and Rs.60.54p. in total Rs.183.09p. and dismissed the suit of the plaintiff for rest of the amount.

Hence, this appeal by the plaintiff/appellant.

Learned counsel for the appellant submitted that the finding of the court below on the issue decided against the appellant is absolutely illegal whereas learned counsel for the respondents submitted that in fact, though the trial court has decided each and every issue which were in relation to separate charges but according to learned counsel for the respondents, the appellant's suit was barred by time and that it should have been dismissed only on this ground. It is contended that the dispute arose between the parties in the year 1968 and at that time, the plaintiff's only contention was with respect to application of multiplier of 3 for the meter reading and with respect to the levy of charge in accordance with the medium schedule of the tariff and charges according to the

High Tension (H.T.) tariff from the date when 265 H.P. load was allowed to the plaintiff for 24 hours. There was no dispute with respect to any other charge levied by the respondents. In the first round of litigation, the matter was settled by compromise and, therefore, the plaintiff had no right to raise the grievance with respect to any other charges levied by the respondents.

I considered the submissions of learned counsel for the parties and perused the record as also reasons given by the court below.

It appears from the contention raised by the appellant that the appellant want to enforce the terms and conditions which according to the appellant were agreed by the parties in their compromise irrespective of the fact whether those conditions could have been enforced when the parties are governed by the statutory contract under the conditions of supply of electricity and charges to be levied according to the terms and conditions framed under the statutory authority of the respondents. Be it as it may be, even then the court below considered each and every aspect of the matter and has decided the issues substantially against the plaintiff. In appeal, though several grounds have been raised for challenging the judgment and decree of the trial court but learned counsel for the appellant

failed to substantiate his arguments n the light of the conditions of supply of electricity by the respondents on any of the grounds.

In view of the above, I do not find any merit in this appeal and the same is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya